

May 25, 1971

Mr. George H. Aldrich
Deputy Legal Adviser
Department of State
Washington, D.C. 20520

Dear Mr. Aldrich,

Thank you for your letter of May 21, concerning my comments on the Genocide Convention.

I note your remark that "our intent in planning a deterrent strategy is not genocidal". Of course, I concur with that view and with that intent. However, I find it difficult to follow the argument that "assured destruction" falls short of the "destruction of a national group as such within the meaning of the Genocide Convention". Unless one invokes the inherent right of self-defense as an exception, I do not see how there can be a legal escape from the characterization of a deterrent strategy as a conspiracy to commit genocide. To be sure it is a contingent strategy, and one to which I can see no better alternative as a basic element in our defense policy. However, it is only the exception for self-defense that can exclude it from the definition of conspiracy. Consider, for example, that some other group within the country had organized a conspiracy for the assassination of a public figure, had developed very detailed plans for the realization of that aim, and had organized the means necessary for the implementation of those plans. The fact that the group had also agreed to make their action contingent on some specific action of that public official, even an illegal one, would not mitigate the charge of conspiracy.

Of course, I understand that the Convention is not intended to be an arms control measure and I know very well the kind of evil to which it is overtly directed. But its formal adoption as a treaty will be adding a body of organic law for which there are not many precedents. I fear that our own courts will then become the arena of contentious arguments that we would do well to anticipate and avoid. In the long run, I am sure the courts would sustain the legality of our traditional policies. But the very process will have its own costs, particularly if there should be some confusing judicial decision at an intermediate level. For example, we have sufficient problems vis-a-vis government supported research on our campuses at the present time without giving substance to charges that work related to our defensive strategies is part of an overtly illegal conspiracy.

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The closing remarks of your letter suggest a reasonable way out of this dilemma: an explicit reference to the "inherent right of self-defense" and the clear cut articulation of our understanding that this is not impaired by the Convention.

I am quite sympathetic to the arguments for U.S. ratification and hope we can find prudent ways to minimize these impediments.

Sincerely yours,

Joshua Lederberg
Professor of Genetics

JL/rr